

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0241
Sales and Use Tax
For 2004

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ISSUE

I. Sales and Use Tax—Renting and Leasing

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-2.5-5-8(b); IC 6-2.5-8-8; IC 6-2.5-4-10(b); Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

Taxpayer protests the assessment of sales and use tax due on the purchase of an aircraft Taxpayer asserts was rented and leased.

STATEMENT OF FACTS

Taxpayer is a single member LLC that purchased an aircraft with the intentions of renting and leasing to a flight school. The Department sought documentation to substantiate the rental and leasing exemption. The documentation did not adequately substantiate that Taxpayer was renting and leasing, so Taxpayer was assessed use tax due on the purchase of the aircraft. Taxpayer filed a protest and a hearing was held.

I. Sales and Use Tax—Renting and Leasing

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Taxpayer purchased a new aircraft from an Indiana dealer and when Taxpayer submitted Form 7695 to the Department to register the aircraft, Taxpayer claimed a sales and use tax exemption for rental or lease to others. As required on Form 7695, Taxpayer entered its Retail Merchants Number in the exemption section.

IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana and a retail merchant is required to collect the tax as agent for the state. IC 6-2.5-4-1 defines a retail transaction as the acquisition of tangible personal property for resale to a customer for consideration. When tangible personal property is transferred to a customer, sales tax is to be calculated and collected. Sales of aircraft in Indiana are subject to the imposition of sales tax. Exemptions to the

imposition of sales tax exist. IC 6-2.5-5-8(b) grants a sales tax exemption for tangible personal property acquired for resale, rental, or leasing in the course of business. Taxpayer purchased the aircraft and claimed the exemption when registering the aircraft with the Department. Because IC 6-2.5-2-1 requires a merchant to impose and collect sales tax when a sale is made, Taxpayer would have given the dealer a Tax Exemption Certificate, as required by IC 6-2.5-8-8. Under the statute, only retail merchants, wholesalers, manufacturers, and others registered with the Department may issue an exemption certificate and not have sales tax imposed and collected by the seller. Taxpayer was a registered retail merchant with the Department when it claimed the exemption.

Taxpayer entered into a non-exclusive rental and lease contract with a flight school. The flight school intended to rent the aircraft to students for flying lessons toward pilot certification. IC 6-2.5-4-10(b) defines renting and leasing as a retail transaction upon which sales tax is to be collected on the consideration paid. Taxpayer was to have collected sales tax from the flight school on all consideration paid to Taxpayer, both monetary consideration and exchanges and credits. Taxpayer did not collect sales tax from the flight school—as required by IC 6-2.5-2-1. Taxpayer asserted at the hearing that the contract with the flight school was written to acknowledge that the flight school intended to resell use of the aircraft to students. Taxpayer asserted that the flight school was entitled to the sales tax exemption for resale/renting and leasing. The Department asked Taxpayer for a copy of the sales tax exemption certificate submitted by the flight school, as required by IC 6-2.5-8-8. Taxpayer stated that the flight school had not given Taxpayer an exemption certificate. For the record, the flight school was not registered with the Department and was not legally able to have given Taxpayer a sales tax exemption certificate.

A review of reconciliation log provided to Taxpayer by the flight school of rental transactions indicated that the sole member of Taxpayer LLC used the aircraft along with others. No sales tax or use tax was submitted to the Department for the member's use of the aircraft. Taxpayer stated at the hearing that the aircraft was used in an effort to solicit additional business for renting and leasing. Nonetheless, use of the aircraft by the Taxpayer required that use tax have been paid by Taxpayer. Taxpayer has merged its personal use of the aircraft with the rental and leasing use of the aircraft.

The Indiana Supreme Court has held that exemption statutes are strictly construed against a taxpayer; a taxpayer has the burden of establishing its entitlement to an exemption. Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003). Taxpayer has not substantiated a qualified exempt use.

FINDING

For the reasons stated above, Taxpayer's protest is denied.